

ENTERED

September 24, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISIONSEAN SIMPSON; CHARLA SIMPSON; §
OS NEW MEXICO, LLC; OS REGIONAL §
DEVELOPERS COLORADO, LLC; JOHN §
BAIRD; BRET KURIHARA; BNS RD §
LLC; MARY JO MCHENRY; K&L §
WELLNESS, LLC; LINDA BURBANK; §
and KEN BURBANK, §

Plaintiffs, §

v. §

OSTEOSTRONG FRANCHISING, LLC, §

Defendant. §

Civil Action No. 4:19-CV-02334

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the August 8, 2025, Report and Recommendation (“R&R”) prepared by Magistrate Judge Dena H. Palermo. (Dkt. No. 218). Judge Palermo made findings and conclusions and recommended that Plaintiffs’ Motion for Summary Judgment, (Dkt. No. 191), be **GRANTED in part** and Defendant Osteostrong Franchising, LLC’s (“Osteostrong”) Motion for Summary Judgment, (Dkt. No. 194), be **GRANTED in part**.

The Parties were provided proper notice and the opportunity to object to the R&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On September 18, 2025, Plaintiffs Sean and Charla Simpson (“the Simpsons”), OS New Mexico, LLC, OS Regional Developers Colorado, LLC, John Baird, Bret Kurihara, BNS RD LLC, Mary Jo McHenry, Linda and Ken Burbank (“the Burbanks”), and K&L Wellness, LLC (collectively, “the Franchisees”)

filed five objections. (Dkt. No. 222). First, the Franchisees object to the R&R's recommendation that the Court grant Osteostrong's Motion for Summary Judgment as to the Simpsons, McHenry, Baird, and Kurihara claims based on general releases that they signed. (*Id.* at 7–16). Second, the Franchisees object to the R&R's recommendation that the Court grant Osteostrong's Motion for Summary Judgment as to their negligent misrepresentation claims. (*Id.* at 16–19). Third, the Franchisees object to the R&R recommendation that the Court grant Osteostrong's Motion for Summary Judgment as to their unjust enrichment claims. (*Id.* at 20). Fourth, the Simpsons object to the R&R's legal and evidentiary conclusions as to their judicial privilege defense. (*Id.* at 20–22). Fifth, the Franchisees object to the R&R's failure to reconsider a 2021 order entered by the Court, Judge Lynn Hughes then presiding, which granted partial summary judgment against the Simpsons. (*Id.* at 22–23); (*see also* Dkt. No. 101).

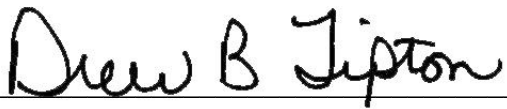
In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to “make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection [has been] made.” After conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the R&R to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the R&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Judge Palermo's R&R, (Dkt. No. 218), is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court;
- (2) Plaintiffs' Motion for Summary Judgment, (Dkt. No. 191), is **GRANTED in part**; and
- (3) Defendant Osteostrong Franchising, LLC's Motion for Summary Judgment, (Dkt. No. 194), is **GRANTED in part**.

It is SO ORDERED.

Signed on September 23, 2025.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE